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No. 89-247

Supreme Court, U.S.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1989

THE STATE OF COLORADO,
Petitioner,
vs.
JOHN WESLEY LACY, JR.
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

BRIEF OF FIRST JUDICIAL DISTRICT ATTORNEY
AS AMICUS CURIAE
IN SUPPORT OF THE PETITIONER

DONALD EARL MIELKE, District Attorney
First Judicial District, State of
Colorado
Counsel of Record

DONNA SKINNER REED, Chief Appellate
Deputy District Attorney, First Judicial
District, State of Colorado

Attorneys for the Amicus Curiae
1726 Cole Boulevard, Suite 300
Golden, Colorado 80401
Telephone: 303-278-6800

14 pp

QUESTION PRESENTED FOR REVIEW

Whether the Colorado Supreme Court erroneously held two guilty pleas to be constitutionally invalid because the trial court did not advise the defendant of critical elements of the crimes when defendant was represented by counsel who did advise defendant as to the charges.

TABLE OF CONTENTS

	<u>Pages</u>
<u>QUESTION PRESENTED FOR REVIEW.</u>	i
<u>TABLE OF CONTENTS</u>	ii
<u>TABLE OF AUTHORITIES</u>	iii
<u>INTEREST OF AMICUS</u>	1
<u>REASONS FOR ALLOWING THE WRIT</u>	4
<u>CONCLUSION</u>	10

TABLE OF AUTHORITIES

Table of Cases:	<u>Pages</u>
<u>Henderson v. Morgan,</u> 427 U.S. 637 (1976)	4,5
<u>Marshall v. Lonberger,</u> 459 U.S. 422 (1983)	4,5
<u>Lacy v. People,</u> 775 P.2d 1 (Colo. 1989). 2,5,8,9,10	



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INTEREST OF AMICUS

The amicus curiae has a substantial
interest in seeing this holding reviewed
because he is the authorized law

enforcement officer of a political subdivision, a judicial district, of Colorado. This brief is filed pursuant to Rule 36.4 of the Rules of the Supreme Court.

The First Judicial District Attorney's Office, State of Colorado, is the office which prosecuted the Lacy case at the trial level and thus has a significant and particularized interest in the outcome of the case.

In line with the discretion vested in the district attorney and in consideration of respondent Lacy's substantial criminal history, this office filed habitual criminal counts along with new charges in 1985. Respondent was convicted by a jury of attempted kidnapping and third degree assault. Respondent was also convicted in a

bifurcated jury trial as a habitual criminal and given a life sentence. The immediate impact of the Colorado Supreme Court's decision, which found two of the underlying pleas on habitual criminal counts involuntary, was the release of the respondent from prison because he had served four years which was the alternative sentence imposed on respondent. This alternative sentence does not meet the public's interest in the protection of society nor in the deterrence and punishment of recidivists.

In addition, this office, as the prosecutor at the trial level, has a different perspective than the party petitioner because of the direct effect which the resolution of these issues will have on the daily resource allocation and charging decisions in this office.

REASONS FOR ALLOWING THE WRIT

This Court should issue a writ and review the holding of the Colorado Supreme Court because it has decided important questions of United States Constitutional Law with a far reaching impact on the finality of convictions and the state's ability to attack the recidivist problem, and it has done so in a way that conflicts with the decisions of this Court.

Henderson v. Morgan, 426 U.S. 637 (1976) and Marshall v. Lonberger, 459 U.S. 422 (1983) establish a presumption that a defendant, who is represented by counsel at the time of the entry of a guilty plea, has been informed of the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit.

At the proceedings where both of the pleas were entered which were held to be involuntary as a matter of law by the Colorado Supreme Court, the respondent was represented by counsel. The Colorado Supreme Court relegates its entire discussion of the Marshall-Henderson holdings, relating to counsel, to a footnote of its opinion. In fact the majority's only reference to Marshall is in the footnote while Henderson is cited for broad general purposes in the body of the opinion. Lacy v. People, 775 P.2d 1 at 8, N.8 (Colo. 1989).

More than misapplying Henderson and Marshall, the Lacy court ignored these holdings. The court appears to give no weight to a counseled, as opposed to an uncounseled, conviction but instead requires a ritualistic recitation by a

judge at the time of taking the plea. This is truly a "form over substance" approach.

The Colorado Supreme Court found both pleas to be constitutionally invalid because the critical elements of the crimes were not explained, on the record, to Lacy.

As to the 1980 Washington plea to second degree assault, Lacy had been given a copy of the information; he acknowledged, in the presence of his attorney, that he had spoken with his attorney and understood the charge; and Lacy and his attorney did not object to the prosecutor's factual account of the crime.

Concerning the 1976 Ohio plea to theft, Lacy and his attorney signed a written guilty plea agreement in which

they acknowledged that counsel had informed Lacy about the nature of the charge; the indictment was attached to the plea agreement and was read in open court.

As to both pleas, the advisements were complete as to the constitutional rights being waived and the possible penalties, and Lacy was examined about whether his pleas were voluntary.

The only evidence before the Colorado trial court at the hearing where Lacy challenged these prior pleas was the certified records and transcripts from Washington and Ohio. There was no testimony. Lacy never testified that he did not understand the charges nor did he testify that he would have chosen to go to trial if he had been more fully advised.

These records establish voluntary pleas under the controlling decisions of this Court. The Lacy decision is incorrect. The decision elevates and makes controlling formal litanies over any inquiry as to defendant's actual understanding of his plea.

There is no question that Lacy did the criminal acts, knowingly pled guilty, was convicted and sentenced, served time in prison for each conviction, and was paroled. Those facts are being repudiated by the Colorado Supreme Court in Lacy.

The cost imposed by the Lacy decision on the criminal justice system is great. Lacy upsets the finality of judgements and enables defendants to avoid the consequences of their prior convictions.

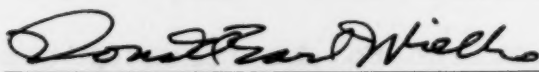
Most states' laws legitimately impose greater sentences on repeat offenders through the use of habitual criminal laws, higher felony classifications for second-time same crime offenders, and provisions which make recidivists ineligible for probation. The Lacy opinion enables defendants like Lacy with multiple convictions to be treated the same as first time offenders.

Given the importance of having counsel as set forth in the U.S. Constitution and as stressed by this Court, it is proper to presume that counsel has done his job especially when there is no evidence to the contrary.

CONCLUSION

Because of the significance of this case and its impact on the criminal justice system and because the Lacy opinion misinterprets, misapplies and ignores decisions of this Court, this Court should issue a writ of certiorari.

Respectfully submitted,

By 
DONALD EARL MIELKE
District Attorney
First Judicial District of
Colorado.
Counsel of record in this
cause and a member of the
Bar of the Supreme Court of
of the United States

DONNA SKINNER REED
Chief Appellate Deputy
District Attorney

First Judicial District
Attorney's Office
1726 Cole Boulevard,
Suite 300
Golden, Colorado 80401
Telephone: 303-278-6800

